

Item No 02:-

17/03494/COMPLY

**Brewery Court
Cirencester
Gloucestershire**

Item No 02:-

Compliance with conditions 6 (temporary public toilets), 7 (archaeology), 8 (drainage), 10 (contamination), 15 (noise/dust), 16 (construction method statement), 20 (travel plan) & 21 (landscaping) - Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures (ref. 14/01529/FUL) at Brewery Court Cirencester Gloucestershire

Compliance with conditions application 17/03494/COMPLY (CT.2239/X)	
Applicant:	Wildmoor (Cirencester) Ltd
Agent:	Pegasus Group
Case Officer:	Mike Napper
Ward Member(s):	Councillor Jenny Hincks
Committee Date:	23rd November 2017
RECOMMENDATION:	PART-COMPLIANCE

Reasons for Referral:

The application relates to land currently in the Council's ownership and therefore Section D (para 3.4) of the adopted Scheme of Delegation expressly requires any such applications to be determined by Planning Committee.

1. Site Description:

The application site runs parallel with Castle Street to the north and Cricklade Street to the east, with the Tesco 'Metro' store to the west. It comprises an area of approximately 1.7 ha in total, although approximately half of it accommodates the Brewery public car park. The remainder of the site area comprises the regionally important New Brewery Arts (NBA) complex, including 'The Barrel Store' tourist accommodation (formerly The Niccol Building), together with retail units, rear service areas of other commercial properties and public toilets. The area is otherwise dominated by paved public open space, which includes the distinctive 'Hare Mosaic', with pedestrian links to Castle Street, Farrell Close and Ashcroft Road. The area is currently also well-used by pedestrians visiting NBA and the other commercial properties fronting the open space and the Bishop's Walk arcade, including associated and public outside seating areas. The site is traversed by established Public Rights Of Way as a result of longstanding public usage.

The site lies within Cirencester's Development Boundary and within the town's Commercial Centre, as defined within the Cotswold District Local Plan. With the exception of the public car park, the site is subject to a site-specific Local Plan policy, Policy CIR.5 (Land Adjacent to Brewery Car Park).

Other than the public car park, the site lies within the Town Centre Conservation Area wherein the Local Planning Authority is statutorily obliged to pay special attention to the desirability of preserving or enhancing the character or appearance of the area, in accordance with Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990. Additionally, the site abuts and affects the setting of listed buildings fronting Cricklade Street and Castle Street. The Local Planning Authority is statutorily required to have special regard to the desirability of preserving the listed buildings, their setting, and any features of special architectural or historic

interest they may possess, in accordance with Sections 16(2) and 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990.

There are also numerous unlisted buildings that are considered non-designated heritage assets that would be affected directly or indirectly by the proposed development, mainly of late C19 or early C20 construction. Within the site, these include the visually prominent former brewery building occupied by NBA, 'The Barrel Store' and the detached two-storey brick building currently in retail use. The site also contains more modern single and one-and-a-half storey late C20th buildings and immediately adjoins the large Tesco 'Metro' store and Bishops Walk buildings that, together with the rear elevations of the Castle Street-fronting properties, dominate views from within the public car park.

The application site also lies within an area of well-established archaeological sensitivity and the eastern part of the site lies within a Scheduled Ancient Monument, which itself is a designated Heritage Asset.

2. Relevant Planning History:

13/01034/FUL Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops, a multi-purpose arts facility and refurbished public realm, including the provision of a new substation and new public toilets both replacing existing structures: Permitted 10.01.14 (BUT PLEASE NOTE THAT THIS DECISION WAS THE SUBJECT OF LEGAL CHALLENGE AND IS TO BE QUASHED).

14/00270/FUL Change of use of Niccol Centre to a Youth Hostel with associated external alterations: Permitted 16.05.14.

14/01529/FUL Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Permitted 24.11.14.

14/01530/LBC Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Consent 24.11.17.

17/04090/COMPLY Compliance of with conditions 9 (Piling Method Statement), 13 (noise), 14 (noise), 24 (wall details), 25 (roof materials), 26 (samples), 27 (sample panels), 28 (fenestration), 29 (timber) and 30 (fenestration) - Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Part-Compliance only in respect of Phase 1 works (see separate report on this Schedule).

17/04091/COMPLY Compliance with conditions 3 (samples), 4 (roofing), 5 (walling), 6 (sample panels), 7 (fenestration), 8 (timber) and 9 (design plans) - Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Part-Compliance only in respect of Phase 1 works (see separate report on this Schedule).

17/04454/COMPLY Compliance with Condition 19 (raised parking area) - Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures: Pending consideration (see separate report on this Schedule).

17/04552/NONMAT Non-material amendment to applications for revisions to wording of conditions 10 (Contaminated Land) and 19 (Raised platform) of planning permission ref.

14/01529/FUL (Mixed use development comprising a four screen cinema, student accommodation, restaurants and cafes, shops and refurbished public realm, including the provision of a new substation and new public toilets, both replacing existing structures): Pending consideration (please see Item 1 of Schedule).

3. Planning Policies:

LPR05 Pollution and Safety
 LPR37 Travel Plans
 LPR38 Accessibility to & within New Develop
 LPR39 Parking Provision
 LPR42 Cotswold Design Code
 LPR45 Landscaping in New Development

4. Observations of Consultees:

Highways Officer: No objection.

Landscape Officer: No objection.

Environmental Protection Officer: Further information required for full compliance.

Lead Local Flood Authority: No objection.

Drainage Engineer: No objection.

CDC Car Park Manager: No objection.

County Archaeological Officer: No objection, subject to submission of final findings report.

5. View of Town/Parish Council:

Cirencester Town Council: "The Committee noted, with regret, that a start had not been made to comply with any of the planning compliance conditions which applied to the original planning consent for this development, which is due to expire on 24th November 2017. In the meantime, it was understood that a start on work to demolish the former "Jungle" retail premises, in order to gain access to and commence investigation work into an area of potential contamination, will be made. This, in order to comply with the 3 year planning consent rule that the proposed development has commenced. These are minor, but physically and visually disruptive, works in comparison with the scale of the proposed development as a whole. The Planning Committee therefore recommended that an extension of time for the compliance of planning conditions should be refused and a new planning application invited from this or another developer able to proceed".

6. Other Representations:

1 Third Party letter of Objection: "New Brewery Arts was not notified on this consultation period. We were made aware of activity on this planning from a letter from Pegasus Group dated 2nd November and received on 03rd November 2017. We have made our best efforts to review any impact this will have on our business in the short time frame available, we reserve the right to make further comments should other unforeseen issues arise. We object to the proposal for the reasons listed below:

- Critically, the area outlined in the compound plan completely obstructs our emergency fire exit. This is clearly not acceptable.

- Furthermore, we believe the drawing shows the defined compound plan area encroaches onto our land. We have had limited time to look at full-size plans, but we are very concerned that land in front of our accommodation building to which we have a lease (dated 7th Feb 2007), has been included in the defined compound plan area. This encroachment is not acceptable.

- Access from Brewery Car Park into Brewery Court is too restricted to our premises for services such as refuse collection and emergency services such as fire and ambulance. We would request that a minimum width of 3 metres is retained, and that this should be determined in consultation."

7. Applicant's Supporting Information:

Please see Officer's Assessment

8. Officer's Assessment:

(a) Condition 6 (Temporary public toilets)

Condition 6 is as follows:-

"Prior to the commencement of the development, details for the temporary provision of public toilets following the closure of the existing public toilets shall be submitted to and approved in writing by the Local Planning Authority. Temporary public toilets shall then be provided in accordance with the approved details prior to the closure of the existing public toilets, unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure the continuous availability of public toilet facilities in the vicinity, in accordance with the provisions of the NPPF and Cotswold District Local Plan Policy 32."

The current facility offers 3 unisex units, which are also accessible for disabled persons, and include baby changing facilities. The proposed temporary facilities maintain provision for disabled access and baby changing facilities, including the following:-

- 1 disabled WC
- 3 stalls in the ladies toilet, and
- 2 stalls and 3 urinals in the gents toilet.

In consultation with the Highways Officer and the Council's Parking Manager, officers can confirm that the temporary provisions are considered to offer a similar amount and variety of facilities for all users, and would be sited in an appropriately accessible location. Drawings are attached to this report to illustrate the proposed provision. Consequently, officers recommend approval of compliance with this condition.

(b) Condition 7 (Archaeology)

Condition 7 is as follows:-

"No development shall take place within the application site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.

Reason: To make provision for a programme of archaeological mitigation, so as to record and advance understanding of any heritage assets which will be lost, in accordance with paragraph 141 of the National Planning Policy Framework."

The applicant has submitted a Written Scheme of Investigation, which the County Archaeological Officer has confirmed is appropriate. Full compliance will be achieved following the receipt of a report describing the findings of the investigation. Consequently, officers recommend approving part-compliance with the condition pending the receipt of the report.

(c) Condition 8 (Drainage)

Condition 8 is as follows:-

"Prior to the commencement of development, a full surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position and construction of the drainage scheme and results of soakage tests carried out at the site to demonstrate the infiltration rate. The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby approved and shall be maintained in accordance with the management plan thereafter.

Reason: To ensure the proper provision for surface water drainage and/or to ensure flooding is not exacerbated in the locality, in accordance with the Cotswold Strategic Flood Risk Assessment, NPPF and Planning Policy Statement 25 Technical Guidance."

The detailed drainage plan has been delegated by the Lead Local Flood Authority (LLFA) to the Council's Drainage Engineer for consultation purposes. The Engineer's initial comments were as follows:-

"my summary is that the proposed surface water disposal design does not offer the normally required level of performance. However, due to the significant reported site constraints, coupled with the fact that the exceedance pathways and flood extents are shown to be on CDC owned land, it could be argued that the normal NPPF rule concerning a development flooding existing property could be waived but that is a matter for the planning team (note comments below on feasibility). The risk to the car park is considered very low due the level of event required to cause the exceedance pathways to come into effect. From general discussion, I cannot fathom how the development will be able to create the usual required level of attenuation or infiltration and therefore I am content to accept this current surface water disposal proposal, subject to the developer and subsequent landowner accepting responsibility for the ownership, maintenance and ultimate renewal of the new pipeline and storm cells. That responsibility could be transferred to CDC but a commuted sum would be required to be paid to CDC. A transfer to CDC would ensure that the pipeline and storage units would be kept at an optimum level of performance to minimise any risk to the CDC car park and pedestrian areas."

Following further assessment, the Engineer commented that "The details submitted do follow the principles set out in the application documents recorded for 14/01529/FUL with regard to surface water drainage. My previous message clearly states that I feel that the risk to CDC owned land/car park is low. I do not object to the plan for the landowner to be responsible for this new s/w drainage system. CDC has powers to have maintenance/ renewal works carried out on drainage systems that cause communal problems. Therefore, we will solely monitor the situation post construction." On this basis, he has confirmed that the drainage proposals are acceptable.

Officers have also consulted the Council's Estates team in respect of exceedance flood risk within the public car park and, as there has to date been no record of any flooding history in the two areas identified and that by definition the incidents of flood risk that would affect those areas would be exceptional (1:100 years), officers are satisfied that the drainage details should be approved.

(d) Condition 10 (Ground contamination)

Members will note that this condition is also the subject of a Non-Material Amendment application to revise its wording, as discussed under the preceding Schedule item.

The original wording of the condition is as follows:-

"No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site

investigation shall be made available to the Local Planning Authority before any development begins. If any significant contamination is found during the site investigation, a report (the Remediation Scheme) specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before any development begins. The Remediation Scheme, as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority written confirmation that all works were completed in accordance with the agreed details.

Reason: To ensure any contamination of the site is identified and appropriately remediated, in accordance with Cotswold District Local Plan Policy 5 and the provisions of the NPPF."

The revised wording as proposed under the Non-Material Amendment application is as follows:-

"No phase of development, other than works of demolition (Phase 1) hereby approved, shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority before any other phase of development begins. If any significant contamination is found during the site investigation, a report (the Remediation Scheme) specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before any development in any other subsequent phase begins.

The Remediation Scheme, as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority written confirmation that all works were completed in accordance with the agreed details.

Reason: To ensure any contamination of the site is identified and appropriately remediated, in accordance with Cotswold District Local Plan Policy 5 and the provisions of the NPPF."

As explained in the report to the Non-Material Amendment application, the revised wording is intended to allow demolition works (Phase 1 of the overall development) to take place that are a necessary part of the ground investigation. The other requirements of the condition would be materially unaltered.

Following consultation with the Environmental Protection Officer, it has been confirmed that additional information will be required before full compliance with the condition can be confirmed. The Officer states that additional site investigation works need to be carried out and this can only be achieved following the demolition of structures at the site. She goes on to state that "The Non-Material Amendment application submitted to amend Condition 10 of planning permission 14/01529/FUL, proposes that demolition takes place prior to the site investigation works being undertaken. This will allow access to other areas of the site to undertake the required investigation and monitoring works in order to identify and characterise the risks present at the site enabling the applicant to plan and undertake any remedial works to address them. Condition 11 of planning permission 14/01529/FUL is attached to the permission to provide an additional safeguard to ensure that any unknown contamination is dealt with at the site if not found during the main investigation (this is a sweep up condition). The amendment allows the required ground investigation to be undertaken, before ground and enabling works begin (Phase 2). This will ensure that risks from ground contamination are assessed at an appropriate time. This approach will allow the applicant to assess risks to the environment and future site users of the proposed development in an appropriate way."

On the basis of the Officer Recommendation to approve the Non-Material Amendment application, if the Committee has resolved to support that Recommendation, officers are satisfied that compliance would be satisfied insofar as Phase 1 of the development is described. The revised wording would be beneficial to all parties concerned as it would allow the full investigation works to be carried out in compliance with the condition. Full compliance would need to be satisfied at a later date prior to commencement of Phase 2 or any other phase of the construction works. The Officer Recommendation to this application therefore reflects this position.

Alternatively, if the Committee has resolved not to approve the Non-Material Amendment application, the current wording of Condition 10 does not allow for the full extent of the necessary investigation works to be undertaken. Consequently, officers would not be in a position to recommend part-compliance.

(e) Condition 15 (Noise & dust mitigation)

Condition 15 states that:-

"Demolition and construction works shall not commence until a scheme for minimising noise and dust emissions has been submitted to and approved by the Local Planning Authority and all works that form part of the said scheme shall be undertaken for the duration of the demolition and construction works.

Reason: To protect the amenity of the locality, especially for people living and/or working nearby, in accordance with Cotswold District Local Plan Policy 5 and the provisions of the NPPF."

The Environmental Protection Officer has confirmed satisfaction with the measures proposed within the applicant's 'Noise and Dust Mitigation Scheme' and 'Construction Phase Health & Safety' reports, which include measures that would be enforceable throughout the construction period. Officers are therefore content to recommend approval of compliance with this condition.

(f) Condition 16 (Construction Method Statement)

Condition 16 is as follows:-

"No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the demolition and construction period. The Statement shall:

- i) specify the type and number of vehicles;
- ii) provide details of the haulage routes to sites;
- iii) provide for the parking and turning of vehicles of site operatives and visitors;
- iv) provide for the loading and unloading and turning of plant and materials;
- v) provide for wheel washing facilities;
- vi) specify the intended hours of construction operations; and
- vii) measures to control the emission of dust and dirt during construction.

Reason: To reduce the potential impact on the public highway, in accordance with Cotswold District Local Plan Policy 38 and the provisions of the NPPF."

The applicant has submitted a 'Construction Method Statement' with layout plan (please see attached to this report) Consultations have been undertaken with the Council's Parking Manager, Estates team and the Highways Officer to ensure that the demolition and construction phases of the development appropriately take account of the on-going functionality of the site, including maintaining accessibility to users.

Whilst the comments of New Brewery Arts (NBA) are noted and have been circulated, including to the applicant. rights of access are protected by other legal agreements and requirements, with which the applicant will need to accord, and are therefore *ultra vires* to the planning permission. The NBA building would remain in Council ownership and contractual agreements are in place to ensure the maintenance of appropriate means of escape in case of fire. The Council's Estates Team, Parking Manager and Highways Officer are satisfied that accessibility to the meet the necessary standards have been demonstrated to allow the submitted Construction Method Statement and associated plan can be approved.

(g) Condition 20 (Travel Plan)

Condition 20 is as follows:-

"No works shall commence on site on the development hereby permitted until a Travel Plan has been submitted to and agreed in writing by the Local Planning Authority, setting out:-

- i. objectives and targets for promoting sustainable travel;
- ii. appointment and funding of a Travel Plan Co-ordinator;
- iii. details of an annual monitoring and review process;
- iv. details of annual reporting to GCC;
- v. means of funding of the Travel Plan, and
- vi. an implementation timetable including the responsible body for each action.

The approved Travel Plan shall be implemented prior to occupation of any part of the development and shall be continued thereafter in accordance with the details therein unless otherwise agreed in writing by the Local Planning Authority.

Reason: To encourage non-car modes of transport, in accordance with Cotswold District Local Plan Policy 38 and the provisions of the NPPF."

The applicant has submitted a 'Workplace and Student Accommodation Travel Plan' with which the Highways Officer has been consulted. The Plan includes proposals for restriction of students' cars under the terms of the individual tenancy agreements. The shuttle bus service operated by the Royal Agricultural University (RAU) from the Market Place would provide a bespoke alternative for RAU students to the use of private cars. The Travel Plan would be monitored and reviewed on a regular basis (3 months after the initial occupancy and every 5 years thereafter) in consultation with the Council (County Council) to ensure its effectiveness.

The Highways Officer has confirmed his satisfaction with the Travel Plan and officers therefore recommend that compliance with the condition is approved.

(h) Condition 21 (Landscaping)

Condition 21 is as follows:-

"The development shall not start before a comprehensive landscape scheme has been approved in writing by the Local Planning Authority. The scheme must show the location, size and condition of all existing trees on and adjoining the land and identify those to be retained, together with measures for their protection during construction work (in accordance with BS5837: 2012 - 'Trees in Relation to Design, Demolition and Construction'). It must show details of all planting areas, tree and plant species, numbers and planting sizes, hard surface materials, gates, means of enclosure, street furniture and provision for public art to be used throughout the proposed development.

Reason: To ensure the development is completed in a manner that is sympathetic to the site and its surroundings in accordance with Cotswold District Local Plan Policy 45."

The submitted landscaping scheme is attached to this report, which shows surface treatments, planting and street furniture across the application site, which accord with the principles of the design illustrated under the original planning application. The Landscape Officer has confirmed

her satisfaction with the proposals, although clarification is sought regarding the surface treatment of the raised pedestrian priority parking area to ensure consistency with the details to be submitted in accordance with Condition 19 (Raised Parking area), which is the subject of a separate condition compliance application later in this Schedule. Clarification will be provided at the Committee Meeting. Conditions 22 and 23 of the permission ensure the timescale for completion of the landscaping works and replacement planting in the event of the failure of any of the initial planting.

Officers are therefore content to recommend approval of compliance with this condition.

9. Conclusion:

In light of the above commentary, officers are satisfied that part-compliance, having regard to final information that would need to be submitted in respect of archaeology and contamination, can be approved for the conditions listed under this application.

10. Proposed conditions:

Condition 6 - submission of details for the temporary provision of public toilets following the closure of the existing public toilets (drg. 41086/064G; Portakabin Portaloo; 3-D view and statement) - APPROVED;

Condition 7 - secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, including a timetable for the submission of the findings (WSI - 5849 - April 2016) - WSI APPROVED

Condition 8 - submission of a full surface water drainage scheme (Connect Consultants - 21 Aug 2017) - APPROVED;

Condition 10 - submission of details of a site investigation of the nature and extent of contamination - PART-COMPLIANCE insofar as the details submitted relate to Phase 1 of the development only;

Condition 15 - submission of a scheme for minimising noise and dust emissions ('Noise and Dust Mitigation Scheme' by Barnwood Construction, dated September 2017; 'Demolition Plan' by WR Demo, dated 22.09.17) - APPROVED;

Condition 16 - submission of a Construction Method Statement ('Construction Method Statement' by Barnwood Construction, dated September 2017) - APPROVED;

Condition 20 - submission of a Travel Plan ('Commercial and Student Accommodation Travel Plan', by Connect Consultants, dated April 2017) - APPROVED;

Condition 21 - submission of a comprehensive landscape scheme (drwg. no. 50099 01E) - APPROVED.